



Wiley Rein & Fielding LLP

RECEIVED
FEDERAL ELECTION
COMMISSIONS CENTER
SECRETARIAT

7003 DEC 17 P 1:21
2003 DEC 30 A 11:05

AOR 2003-39

Jan Witold Baran
202.719.7330
jbaran@wrf.com

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

December 17, 2003

VIA HAND DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request

Dear Commissioners:

On behalf of the Credit Union National Association ("CUNA"), its separate segregated fund, the Credit Union Legislative Action Council of CUNA ("CULAC"), and the North Carolina Local Government Employees' Federal Credit Union ("Local Government FCU"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f, regarding a charitable match program by Local Government FCU.

In summary, Local Government FCU intends to match voluntary contributions to CULAC from its executive and administrative personnel, individual account holders, and their families with donations to section 501(c)(3) charities of the contributors' choice. Requestors want to ensure that this charitable match program will comply with the Federal Election Campaign Act of 1971, as amended (the "Act").

FACTS

Background on Requestors

CUNA is a trade association incorporated in the state of Wisconsin as a non-stock, non-profit corporation with members. It is recognized as an organization exempt from federal income tax under 26 U.S.C. § 501(c)(6). CUNA represents over 90% of the nation's more than 10,400 state and federal credit unions. CUNA was organized to, among other things, promote and improve business conditions relating to the operation of its members. CUNA's members consist of state- and federally-chartered credit unions as well as 51 credit union leagues representing the 50 states and the District of Columbia.

In FEC Advisory Opinion 2000-15 (citing FEC Advisory Opinion 1998-19), the Commission reaffirmed that CUNA is a federation of trade associations. In FEC

2003 DEC 17 P 2:49
OFFICE OF GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

Federal Election Commission

December 17, 2003

Page 2

Advisory Opinion 1998-19, the FEC found that the state leagues of CUNA and the credit union members of the state leagues may be considered a "branch, division . . . or local unit" of CUNA under 11 C.F.R. § 102.6(b)(1)(iii). As a result, the Commission found that the leagues and the credit unions could act as collecting agents in receiving and transmitting contributions for CULAC. Id. Accordingly, the collecting agent leagues and credit unions could pay the costs of soliciting and transmitting the CULAC contributions. Id.

CULAC is a separate segregated fund established and administered by CUNA. CUNA solicits and accepts contributions to CULAC from the executive and administrative personnel of CUNA and its member credit unions and leagues. CUNA also solicits and accepts contributions to CULAC from the individual account holders of its member credit unions. In FEC Advisory Opinion 1998-19, the Commission found that CULAC, with prior approval, could solicit individual members of credit unions because such individuals were like shareholders in corporations.

Local Government FCU is a federally-chartered credit union located in Raleigh, North Carolina. It has 114,000 individual members or account holders. Local Government FCU is a member of the North Carolina Credit Union League and a member of CUNA. Local Government FCU solicits contributions for CULAC from its executive and administrative personnel, individual account holders, and their families. In FEC Advisory Opinion 1998-19, the Commission found that individual members of credit unions qualify as members of a membership organization under the Act and may be solicited for federal contributions to separate segregated funds.

The Certificates of Incorporation and Bylaws of CUNA and Local Government FCU are enclosed.

Proposed Charitable Match Program

Local Government FCU has given prior written approval to CULAC to solicit voluntary contributions to CULAC from its restricted class. For each voluntary contribution made to CULAC by an individual contributor, Local Government FCU proposes to make a matching contribution to any section 501(c)(3) charity of the contributor's choice, dollar for dollar, up to the maximum amount an individual may contribute to CULAC during the given calendar year. The charitable match program would be similar to the program approved in FEC Advisory Opinion 2003-4.

Federal Election Commission
December 17, 2003
Page 3

In the proposed program, individual contributors would not receive any tax benefits from the matching donations made on their behalf. The matching plan would be completely voluntary, and individual contributors would not receive any bonuses, expense accounts, or other forms of direct or indirect compensation as a result of their participation in the plan. Local Government FCU will provide each contributor to CULAC with written notice that he or she may not receive any tangible benefit from the charity in exchange for the matching contribution. Local Government FCU will also advise the charity at the time of the matching donation that the contributor may not receive any tangible benefit in exchange for the matching contribution.

QUESTION PRESENTED

For each voluntary contribution made to CULAC by an individual credit union member, may Local Government FCU, a member credit union of CUNA, make a matching contribution to a section 501(c)(3) charity of the contributor's choice, dollar-for-dollar, up to the maximum amount an individual may contribute to CULAC during the given calendar year?

DISCUSSION

The Commission's regulations and prior holdings, including those related to CUNA, appear to authorize the making of matching charitable donations by the member credit unions of CUNA.

Commission regulations allow a collecting agent to solicit contributions for a separate segregated fund from its restricted class.¹ *Id.* § 102.6(c)(2). Such solicitations must meet all of the requirements for proper solicitations under section 114.5 of the Commission's regulations. *Id.* In undertaking such solicitations, "[t]he collecting agent may pay any or all of the costs incurred in soliciting and transmitting contributions to the separate segregated fund." *Id.* § 102.6(c)(2)(i).

Incumbent upon the collecting agent in this process is transmitting the contributions to the separate segregated fund within the proper time limits, *id.* § 102.6(c)(4),

¹ A collecting agent is "an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related." 11 C.F.R. § 102.6(b)(1). Collecting agents include "[a] parent, subsidiary, branch, division, department, or local unit of the connection organization of the separate segregated fund." *Id.* § 102.6(b)(1)(iii).

Federal Election Commission

December 17, 2003

Page 4

transmitting the appropriate contributor information to the separate segregated fund, id. § 102.6(c)(5), and retaining records of the contributions, deposits, and transmittals for three years, id. § 102.6(c)(6).

As stated above, the Commission on a prior occasion found that “the credit union members of the State leagues [of CUNA] may be considered as a ‘branch, division . . . or local unit’ of CUNA under 11 CFR 102.6(b)(1)(iii) and may therefore act as collecting agents in receiving and transmitting contributions for CULAC.” FEC Advisory Opinion 1998-19. In the same advisory opinion, the Commission reiterated its own regulations by stating that a “collecting agent may pay any or all of the costs incurred in soliciting and transmitting contributions to the [separate segregated fund].” Id. (citing 11 C.F.R. § 102.6(c)(2)(i)). In the many advisory opinions that the Commission has issued on matching charitable donations, the Commission has been consistent in its determination that the “corporation’s matching of voluntary political contributions with charitable donations as solicitation expenses related to fundraising for its [separate segregated fund].” FEC Advisory Opinions 2003-4 (emphasis added), 1998-48, 1994-6, 1989-9, 1989-7 & 1987-18; see also FEC Advisory Opinions 1994-7 & 1994-3 (applying same rationale to charitable matches involving twice-yearly solicitations).

By virtue of these advisory opinions and through the collecting agent regulation contained in 11 C.F.R. § 102.6(c)(2)(i), two principals are clear. First, a collecting agent may pay all of the solicitation costs incurred in its solicitation of contributions for a separate segregated fund. Second, the matching of voluntary political contributions to a separate segregated fund with charitable donations is a solicitation expense. As a result of the combination of these two principals, it appears that collecting agents may make such matching charitable donations.

Thus, since the Commission has determined that (i) the credit union members of the state leagues of CUNA are collecting agents for CULAC; (ii) collecting agents may pay the costs associated with soliciting contributions; and (iii) the making of matching charitable donations is a solicitation expense, it seems to follow that Local Government FCU, a member of CUNA, may make a matching contribution to a section 501(c)(3) charity of the contributor’s choice, dollar-for-dollar and up to the maximum amount an individual may contribute to CULAC during the given calendar year, for each voluntary contribution made to CULAC by an individual credit union member.

Wiley Rein & Fielding LLP

Federal Election Commission
December 17, 2003
Page 5

Our clients respectfully request an advisory opinion confirming the above.

Sincerely,



Jan Witold Baran
D. Mark Renaud



Daniel Pollner
12/23/2003 03:17 PM

To: Merita Johnson/FEC/US@FEC
cc: Mai Dinh/FEC/US@FEC

Subject: RE: CUNA AOR Request

FYI...

----- Forwarded by Daniel Pollner/FEC/US on 12/23/2003 03:34 PM -----



"Baran, Jan" <jbaran@wrf.com> on 12/23/2003 02:46:26 PM

To: dpollner@fec.gov
cc:

Subject: RE: CUNA AOR Request

Dan: This is in response to your message and our earlier telephone conversation.

You asked whether my letter of December 17, 2003, was intended to suggest that matching charitable donations would exceed 100% of any contribution to CUNA's separate segregated fund, CULAC. I advised you that my clients did not intend to match more than 100% of any voluntary donation. The request contemplates that only the credit union will currently participate in a charitable matching program and only up to 100% of any CULAC contribution. Under prior opinions, CUNA could itself undertake a similar program. You also asked whether a combination of CUNA affiliates, including CUNA, plan to make charitable matching contributions. While this was not contemplated in the request, CUNA and affiliates do not wish to be precluded from undertaking such a combined program. However, in such an event the total of any combined charitable donations will not exceed 100% of any CULAC contribution.

I trust that this accurately reflects our discussion and provides you with the necessary information for an Advisory Opinion. Thank you.

Jan Witold Baran
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006

202.719.7330
202.719.7207 (fax)

-----Original Message-----

From: dpollner@fec.gov [mailto:dpollner@fec.gov]
Sent: Tuesday, December 23, 2003 2:05 PM
To: Baran, Jan
Subject: CUNA AOR Request